

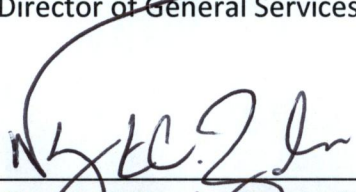


To the Honorable Council
City of Norfolk, Virginia

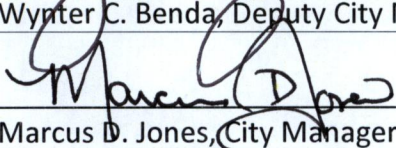
January 27, 2015

From: David S. Freeman, AICP
Director of General Services

Subject: Acceptance of Bid for Long
Term Parking Agreement for 66
Residential Parking Spaces in the York
Street Garage.

Reviewed: 
Wynter C. Benda, Deputy City Manager

Ward/Superward: 2/6

Approved: 
Marcus D. Jones, City Manager

Item Number: IB-1

- I. **Recommendation:** Accept Highest Bid from a Responsible Bidder and Adopt Ordinance
- II. **Applicant:** City of Norfolk
- III. **Description**
This agenda item is an Ordinance accepting a bid for a Long Term Parking Agreement for 66 Residential Parking Spaces in the York Street Garage which was initiated by the developer with the intent of providing parking for resident tenants in the building located at 450 Boush Street. The York Street Garage has sufficient available capacity to accommodate the 66 parking spaces required by this agreement
- IV. **Analysis**
As stated above, sufficient capacity is available in the York Street Garage to accommodate the potential demand of up to 66 total spaces. The term of the parking agreement would be ten (10) years to commence upon the execution of this agreement by the City. Because the term is in excess of five (5) years, the proposed lease must be bid in accordance with the requirements of section 15.2-2100 of the State Code.
- V. **Financial Impact**
Under this Long Term Parking Agreement, the City would provide a maximum of 66 unreserved parking spaces in the York Street Garage for a period of ten (10) years at the unreserved monthly rate charged for 24/7 residential parking (currently \$40.00 per space at this facility). The potential revenue to the Parking Fund could be as high as \$31,680 per year or potentially as high as \$316,800 over the life of the agreement. The rates charged are subject to future rate adjustments.

VI. Environmental

N/A

VII. Community Outreach/Notification

In accordance with the Norfolk City Charter and Virginia State law, legal notice was posted in *The Virginian-Pilot*. In addition, public notification for the agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A


IX. Coordination/Outreach

This letter has been coordinated with the Department of General Services, Department of Development and the City Attorney's Office.

Supporting Material from the Department of Department of General Services:

- Ordinance
- Lease Agreement

Form and Correctness Approved: 

By 
Office of the City Attorney

Contents Approved:

By 
DEPT. General Services

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE ACCEPTING THE BID SUBMITTED BY _____ FOR A LONG-TERM GARAGE PARKING AGREEMENT, WITH A TERM OF TEN YEARS, FOR 66 UNRESERVED RESIDENTIAL PARKING SPACES IN THE YORK STREET GARAGE FOR THE BENEFIT OF THE TENANTS OF THE BUILDING LOCATED AT 450 BOUSH STREET.

- - -

WHEREAS, pursuant to the provisions of Section 15.2-2100, et seq., of the Code of Virginia, 1950, as amended, the City of Norfolk has invited bids for a long-term garage parking agreement with a term of ten years, for sixty-six (66) unreserved residential parking spaces in the York Street Garage, subject to certain terms and conditions, for the benefit of the tenants of the building located at 450 Boush Street; and

WHEREAS, the requirements of Sections 15.2-2101 and 15.2-2102 of the Code of Virginia, 1950, as amended, have been met and the Council has carefully considered all bids submitted; now, therefore,

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That _____, being the highest responsible bidder, its bid for a long-term garage parking agreement, with a term of ten years, for sixty-six (66) unreserved residential parking space in the York Street Garage, in accordance with the terms and conditions set forth in Exhibit A attached hereto,

for the benefit of the tenants of the building located at 450 Boush Street, is hereby accepted.

Section 2:- That pursuant to Section 15.2-2104 of the Code of Virginia, 1950, as amended, the Council has determined that a bond in the sum of \$0 shall be executed in favor of the City of Norfolk.

Section 3:- That the City Manager is authorized to execute a Garage Parking Agreement, containing the terms and conditions set forth in Exhibit A, on behalf of the City of Norfolk and to do all things necessary and proper to carry out its terms.

Section 4:- That this ordinance shall be in effect from and after thirty (30) days from the date of its adoption.

GARAGE PARKING AGREEMENT

THIS GARAGE PARKING AGREEMENT ("Agreement") is made as of the ____ day of _____, 20____, by and between the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia (the "City"), and _____, a _____ company ("_____" or "LESSEE").

RECITALS:

A. LESSEE is the current owner of the property (the "Property") located at 450 Boush Street in the City of Norfolk.

B. It is the intention of LESSEE to construct on the Property a mixed-use development (the "Project").

C. Considerable economic benefit is expected to accrue to City from the operation of the Project, and the City therefore desires to cooperate with LESSEE.

D. The effective operation of the Project by LESSEE requires that sufficient parking for the Project's tenants be located in the immediate vicinity of the Project and be made available to LESSEE on a long-term basis.

E. The City is agreeable to providing LESSEE, and any successor thereof, with parking in the York Street Garage (the "Garage"), located at 215 W. York Street, in the City of Norfolk.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **PROVISION OF PARKING.**

During the Term of this Agreement, the City of Norfolk ("City") shall provide LESSEE parking in the Garage subject to the following conditions:

(a) Parking capacity in the Garage of sixty-six (66) parking spaces (the "Maximum Allocated Amount") will be made available by the City to be set aside exclusively to LESSEE to provide parking for tenants of the mixed use development located at the corner of Boush Street and Charlotte Street (the "Project") pursuant to this Agreement. The parking spaces leased by LESSEE pursuant to this Agreement shall be unreserved.

(b) Any of the parking capacity in the Garage that has not been designated for allocation to the Project may be made available by City to the general public (including the Project's guests) for transient parking on a non-exclusive, unreserved, first-come, first-served, open occupancy basis. LESSEE specifically understands that maximum utilization of all parking spaces is extremely important to City, and LESSEE covenants to do all things reasonably necessary to permit City to obtain such maximum utilization. On any given day, City shall have

no obligation to make available to LESSEE or the Project tenants any parking in excess of the Maximum Allocated Amount.

(c) The City shall initially charge LESSEE the rate in effect as of the commencement date of the City's obligation to provide parking under this Agreement. LESSEE shall not permit any parking spaces that are leased for the Project tenant parking to be used for any other purpose without the express consent of the City. In the event such consent is given, LESSEE shall obtain the necessary Parking Permit and shall pay the standard, residential parking rate for any such parking space. Guests of the Project tenants shall obtain Guest Parking Permits through the City's Parking Division at the standard, residential parking rate set by the City Council.

(d) The Term of City's obligation to provide parking under this Agreement shall commence upon the execution of this Agreement by the City and shall terminate on that date which is ten (10) years after the commencement date. A memorandum of this Agreement may be recorded in the land records of the City of Norfolk, Virginia, and the City agrees to execute and deliver to LESSEE any such memorandum that accurately reflects the terms of this Agreement. LESSEE may terminate this Agreement at any time by giving City not less than thirty (30) days prior written notice. LESSEE may, at any time, lower the number of leased spaces with thirty (30) days prior written notice to City.

(e) As of the date of this Agreement, the Parking Fee for the parking spaces leased to LESSEE in the Garage is at the rate of Forty and 00/100 Dollars (\$40.00) per unreserved space, per month. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the Parking Fee may be increased from time to time by written notice from the City to LESSEE in amounts proportionate to rate increases enacted by the City Council of the City of Norfolk; however, the City agrees that such rates shall not exceed the standard rates charged to other downtown residents of the City.

(f) LESSEE may not charge the Project tenants any parking related fees in excess of those established by the City.

(g) LESSEE agrees to cooperate in all reasonable respects with the City and use such systems as the City may reasonably adopt from time to time, after consulting with LESSEE, in order to track actual use of parking spaces and the number of vehicles parked in the Garage, so long as such systems are generally consistent with those used in other comparable City owned garages to track similar uses of parking. LESSEE agrees to, and agrees to cause its agents, employees, and contractors to; use good faith in the use and administration of any such tracking systems in order to ensure that each vehicle parked in the Garage through the Project-validated guest self-parking is accounted for pursuant to the terms of this Agreement. LESSEE acknowledges and agrees that attempts by LESSEE, its agents, employees or contractors to circumvent such tracking systems and park additional vehicles without payment therefor may constitute grounds for termination of this Agreement.

2. OPERATION AND USE.

(a) The City or its designated operator shall continue to operate the Garage with all services and facilities normally associated with comparable public parking areas in the City of Norfolk.

(b) The City shall allow unimpeded and open access to the Project tenants to and from the Garage at all times, i.e., twenty-four (24) hours per day, seven (7) days per week, including holidays.

(c) In addition to the parking spaces leased to LESSEE, other parking spaces will be available on a non-exclusive, unreserved, self-parking, first-come, first-served, open-occupancy basis subject to such short-term and daily rates as the City establishes.

(d) Upon giving reasonable notice to LESSEE, the City or its designated operator may restrict access to the Garage for the performance of necessary repairs or maintenance and such repairs or maintenance shall be completed as quickly as reasonably possible. If requested by LESSEE, the City will provide replacement parking during such maintenance and repairs at other parking facilities owned by the City, and such facilities will be located as conveniently to the residents of the Project Building as reasonably possible.

(e) Use of the Garage by LESSEE, its tenants, agents, employees, contractors, and guests shall be subject to such reasonable rules and regulations as the City may adopt from time to time. The City shall reasonably and equitably enforce such rules and regulations.

3. MAINTENANCE AND REPAIR.

(a) The City shall continue to maintain the Garage, or contract for the maintenance thereof, at all times in good order and condition, clean and free of rodents, in accordance with maintenance standards employed at comparable public parking areas in the City of Norfolk, so that the Garage shall comply with all building codes, ordinances, regulations, and laws of any governmental authority having jurisdiction thereof. The City shall be responsible for maintenance and repair of the Garage and shall pay all charges for water, sewer, gas, electricity and other utilities. The term "maintenance" shall include, but not be limited to, painting, operation, inspection, testing, repair, replacement of mechanical, electrical, or similar components and/or cleaning the Garage, including any of its elevators and appurtenant facilities.

(b) In the event of any damage or destruction of all or any portion of the Garage, the City shall undertake promptly to repair or rebuild the Garage to provide as promptly as reasonably possible after the date of such damage or destruction, the Maximum Allocated Amount of parking. During the period of any such repair or rebuilding, the City shall provide replacement parking as provided by paragraph 2(d).

(c) The City shall provide and maintain interior and exterior illumination sufficient to illuminate the Garage and all means of pedestrian and vehicular access and egress thereto and therefrom, between twilight and one hour after dawn.

(d) The City shall provide suitable and sufficient signs in and around the Garage as required for safe and orderly flow of pedestrian and vehicular traffic, including signage directing garage users to appropriate the Project entrances and on any general directories provided by the City in the Garage.

(e) The City shall have the right to make and complete, using high quality workmanship and materials, such replacements, repairs, alterations and improvements to the Garage as it deems necessary or desirable in connection with the aforementioned usage consistent with applicable zoning laws. During the period of such replacements, repairs, alterations and improvements, the City shall provide replacement parking as provided by paragraph 2(d).

(f) In performing maintenance, the City shall use reasonable efforts to interfere as little as possible with the use, occupation, and enjoyment of the Garage by LESSEE. If possible, maintenance shall be confined to the area actually being so maintained.

4. TAX LIABILITY.

The provisions of this Agreement shall not be deemed to require LESSEE to pay, by whatever name called, income or receipts or excess profits taxes assessed against the City, or any capital levy, rent, gift or transfer taxes incurred by the City, pertaining to the ownership or operation of the Garage.

5. TITLE TO PROPERTY

The City covenants that it has full right to enter into this Agreement as of the date hereof and the City is or will be seized in fee simple of and have good and marketable title to the Property and any improvements thereon, subject to any recorded liens, leases, encumbrances, easements, covenants, conditions and restrictions and existing zoning and other state and local requirements, none of which shall prevent the City from performing its obligations hereunder.

6. INTEREST; ATTORNEYS' FEES.

If LESSEE fails to pay the City any amounts payable under this Agreement when due, following receipt by LESSEE of notice thereof from the City, such past-due payments shall bear interest from the date due until paid at the rate of six percent (6%) per annum. In addition, LESSEE shall pay all reasonable out-of-pocket costs and expenses of collection (including court costs and reasonable attorneys' fees) incurred by the City in collecting sums due under this Agreement.

7. LIABILITY.

The City shall not be liable to LESSEE or LESSEE's tenants, employees, agents or contractors for any injury, damage, compensation or claim directly or indirectly relating to or arising out of any use of the Garage by LESSEE, LESSEE's tenants, employees, agents or contractors unless such injury, damage, compensation or claim results from the City's gross negligence or willful misconduct.

8. ASSIGNMENT AND LEASING.

(a) LESSEE may not assign this Agreement, in whole or in part, or lease all or any part of the Maximum Allocated Amount of parking provided in the Garage for the Project tenants, except to (i) a purchaser of the Project in the event of a sale thereof (ii) an Affiliate of LESSEE, (iii) any lender as collateral for financing or (iv) any purchaser at a foreclosure sale, transferee pursuant to a deed in lieu of foreclosure, or any receiver appointed for the property. It shall be a condition of any such assignment that the Project shall continue to be used for residential purposes. In the event the Project ceases to be used for residential purposes, the City may terminate this Agreement at any time. For purposes hereof, "Affiliate" shall mean as to any person, any other person that, directly or indirectly, controls, is controlled by or is under common control with such person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a person means the possession, directly or indirectly, of the power to vote more than 50% of the voting stock or membership interests of such person or to direct or cause the direction of the management and policies of such person, whether through the ownership of voting stock or membership interests, or by contract or otherwise. The City agrees to enter into any agreement reasonably requested by any lender or prospective lender to confirm that the assignment of this Agreement to the lender is permitted and to agree to give such lender notice of LESSEE's default and a reasonable opportunity to cure such default.

9. NOTICES.

All notices or other communications required or desired to be given with respect to this Agreement shall be in writing and shall be addressed as follows:

To the City:

Marcus D. Jones, City Manager
City of Norfolk, Office of the City Manager
1100 City Hall Building
810 Union Street
Norfolk, VA 23510

With copies to:

Director of General Services
232 East Main Street, Suite 250
Norfolk, Virginia 23510

Director of City Planning
500 City Hall
810 Union Street
Norfolk, Virginia 23510

Bernard A. Pishko, Esq., City Attorney
Office of the City Attorney
900 City Hall Bldg.
810 Union Street
Norfolk, VA 23510

To LESSEE:

Any communication so addressed shall be deemed duly served when received or when mailed by certified mail, postage prepaid, return receipt requested.

10. TERMINATION.

In the event LESSEE violates any provision of this Agreement or defaults in any of its obligations hereunder, the City may terminate this Agreement if LESSEE fails to cure such violation or default within thirty (30) days after LESSEE's receipt of written notice of the violation or default. LESSEE shall have the right to terminate this Agreement at any time by giving the City thirty (30) days written notice prior to the effective date of the termination.

11. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and may not be amended except by a written agreement that acknowledges modification of this Agreement, and that is signed by an authorized representative of each party, or as expressly provided in this Agreement. This Agreement will not be more strongly construed against either party, regardless of who is more responsible or its preparation.

12. COMPLIANCE WITH FEDERAL IMMIGRATION LAW.

At all times during which any term of this Agreement is in effect, LESSEE shall not knowingly employ any unauthorized alien. For purposes of this section, an "unauthorized alien" shall mean any alien who is neither lawfully admitted for permanent residence in the United States nor authorized to be employed by either Title 8, section 1324a of the United States Code or the U.S. Attorney General.

13. AUTHORIZATION TO TRANSACT BUSINESS IN THE COMMONWEALTH.

LESSEE hereby represents that it is organized as a stock or non-stock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership and is authorized to transact business in the

Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

14. MISCELLANEOUS.

(a) The obligations of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns who shall be only those persons to whom this Agreement is permitted to be assigned in accordance with the terms and conditions of such agreement. Any such successors and assigns shall be deemed to have assumed and agreed to perform all obligations under this Agreement arising from and after such assignment.

(b) Whenever possible each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if any provision of this Agreement is prohibited or unenforceable or is determined to be invalid, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provisions or remaining provisions of the Agreement. Any failure of a Party to exercise any right hereunder shall not be construed as a waiver of the right to exercise the same or any other rights at any time. This Agreement and the rights of the parties hereunder shall be interpreted in accordance with the laws of the Commonwealth of Virginia. Venue shall be in the City of Norfolk, Virginia.

(c) This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which together shall comprise but a single document. The parties hereto agree that facsimile or email signatures shall have the full force and effect of original signatures

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

(SIGNATURE PAGES TO FOLLOW)

CITY OF NORFOLK

By: _____
City Manager

Attest:

City Clerk

COMMONWEALTH OF VIRGINIA
CITY OF NORFOLK, to-wit:

I, _____, a Notary Public in and for the City of Norfolk, in the State of Virginia, whose term of office expires on the ____ day of _____, _____, do hereby certify that Marcus D. Jones, City Manager and R. Breckenridge Daughtrey, City Clerk, respectively, of the City of Norfolk, whose names as such are signed to the foregoing Garage Parking Agreement, have acknowledged the same before me in my City and State aforesaid.

Given under my hand this ____ day of _____, 2014.

Notary Public

Registration No. _____

APPROVED FOR CONTENTS:

Director of General Services

Director of City Planning

APPROVED FOR FORM & CORRECTNESS:

Deputy City Attorney

By: _____

Title: _____

COMMONWEALTH OF VIRGINIA
AT LARGE, to-wit:

I, _____, a Notary Public in and for the City of _____, in the Commonwealth of Virginia, , whose term of office expires on the ____ day of _____, 20____, do hereby certify that _____, the _____ of _____, whose name is signed to the foregoing Garage Parking Agreement, has acknowledged the same before me in my City and State aforesaid. Given under my hand this _____ day of _____, 2014.

Notary Public

Registration No. _____